

Appl. No. 10/541,974
Amdt. dated Feb. 6, 2007
Reply to Office action of Jan. 18, 2007

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REMARKS/ARGUMENTS

General Remarks

Article 34 amendments were filed and entered in the record as can be taken from PAIR. At that time, the defective claim numbering was corrected. The claims as listed in the preceding section reflect the claims in accordance with Article 34 amendments (see MPEP 1893.01(a)(3)).

Restriction/Election

The Office considered the claims of the present application to be directed to patentably distinct inventions. Specifically, the Examiner required election of a single invention, wherein the first invention is drawn to devices (*Group I, reading on claims 1-12*), and wherein the second invention is drawn to methods of marketing (*Group II, reading on claims 13-22*).

The applicant respectfully disagrees for several reasons: The examiner appears to argue that the apparatus as claimed can be made and used without providing information that the apparatus is useful in detection of a flaw in a polymeric material. However, the *preamble clearly and unambiguously recites a test apparatus for polymeric materials*. Further, the specification is clear that the apparatus is used only in testing polymeric materials for potential flaws (Bell Communications Research, Inc. v. Vitalink Communications Corp., 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995); Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999); See also Jansen v. Rexall Sundown, Inc., 342 F.3d 1329, 1333, 68 USPQ2d 1154, 1158 (Fed. Cir. 2003)).

The office alleged another and materially different use for the device of claim 1 relative to the use of claim 13, however, *failed to indicate such other use*. Indeed, the only statement provided by the examiner was that a reiteration that "...the apparatus as claimed can be made and used without providing information that the apparatus is useful in detection of a flaw in a polymeric material..." It should be noted that the *claimed elements of narrow bandwidth in combination with specific beam (and probe) angles are not arbitrarily chosen, but determined in part by the material to be examined. Within these configurational constraints, it is unclear to the applicant what other materially different process can be performed*. Absent a specific

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other and materially different process for the device as claimed put forth by the office, the restriction requirement is improper and should be withdrawn.

Consequently, the applicant *elects with traverse Group I*, reading on *claims 1-12*. The remaining claims 13-22 are withdrawn without prejudice.

REQUEST FOR ALLOWANCE

Claims 1-22 are pending in this application. The applicant requests allowance of all pending claims.

Respectfully submitted,

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